

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

**CATINA PARKER, as Personal Representative
of the Estate of Leonard Parker, Jr., Deceased**

PLAINTIFF

VERSUS

NO.1:21-cv-00217-HSO-JCG

**The CITY OF GULFPORT, a municipal
corporation; JASON CUEVAS, in his individual
and official capacity; and JOHN DOE OFFICERS
#1-5 in their official and individual capacities**

DEFENDANTS

**MOTION TO ASSERT AFFIRMATIVE DEFENSE OF
QUALIFIED IMMUNITY AND FOR OTHER RELIEF**

COMES NOW, the Defendant, Jason Cuevas in his individual capacity, by and through his undersigned attorneys, and, pursuant to the provisions of L.U.Civ.R. 7(b)(2)(A) and 16(b)(3), submits this Motion for the purposes of notification to the Court that this Defendant has asserted the Affirmative Defense of Qualified Immunity in his Separate Answer to the First Amended Complaint, and would show unto the Court the following, to-wit:

I.

The Plaintiff filed a “First Amended Complaint” [Doc. 4] on July 12, 2021, (the original Complaint was filed on June 23, 2021, Doc. 1) and has named several Defendants, including Jason Cuevas in his individual capacity, the Movant herein. The First Amended Complaint asserts a cause of action for civil rights violation (among others) arising out of an encounter between this Defendant, a police officer, and Leonard Parker Jr. [“Parker”] on February 1, 2020, in the City of Gulfport. The Plaintiff alleges that “the amount of force” used against Parker “was

unreasonable, excessive, and unnecessary” and in violation of his “rights” under the Fourth Amendment to the United States Constitution. [Doc. 4, ¶33]. “When sued in their individual capacities, governmental employees are entitled to a presumption of qualified immunity from suit.” Terry v. City of New Orleans, 523 F. Supp. 2d 486, 492 (ED LA 2007) (citing Pfannstiel v. Marion, 918 F.2d 1178, 1183 (5th Cir. 1990)). To overcome this presumption, the Plaintiff has the burden to prove that no reasonable, similarly situated government official would have considered the conduct of the officer to be lawful, under the circumstances known to him at the time. See Anderson v. Creighton, 483 U.S. 635, 640-41 (1987). The First Amended Complaint in this case asserts several causes of action against this Defendant in both his individual and official capacities.

II.

The Local Rules [Rules 7(b)(2)(A) and 16(b)(3), L.U.Civ.R.] of the Court require that the affirmative defense of qualified immunity be raised by a separate motion in response to a complaint. In accordance with such requirement, and in view of well-settled decisional law with respect to the staying of proceedings pending a determination of such immunities under the Rules, the Movant herein asserts his defense and entitlement to qualified immunity in this matter. See Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). The Movant would further state that he is entitled to a judgment as a matter of law on this defense and his intention is to file a motion for summary judgment on such basis after the setting of a deadline for the filing of this particular dispositive motion and the allowance of discovery limited to this issue.

WHEREFORE, this Defendant, Jason Cuevas in his individual capacity, submits this Motion to Assert an Affirmative Defense of Qualified Immunity and for Other Relief, and

respectfully requests that this Honorable Court preliminarily issue an Order staying proceedings of this case pending the determination of the Qualified Immunity defenses of this Defendant as well as to subsequently fully affirm and sustain the Qualified Immunity defense of this Defendant and dismiss the claims asserted against him on that basis. This Defendant further requests all other relief, equitable or otherwise, to which this Honorable Court finds that he is entitled.

Respectfully submitted, this the 14th day of September, 2021.

JASON CUEVAS

BY: COPELAND, COOK, TAYLOR & BUSH, P.A.

BY: /S/ WILLIAM E. WHITFIELD, III
Mississippi Bar No. 7161
/S/ KAARA L. LIND
Mississippi Bar No. 10604

CERTIFICATE OF SERVICE

I hereby certify that on September 14, 2021, I electronically filed the foregoing with the Clerk of the Court using the ECF system which sent notification of such filing to the following:

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